

Application No. 10/537,621
Amendment dated February 17, 2010
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Remarks/Arguments

Claims 1, 3-9, 11-17 and 19-26 remain pending in this application. Of these, claims 1, 9 and 17 are independent claims.

In the Office Action, the Examiner rejected claims 1, 3-6, 8-9, 11-14, 16-17, 19-22 and 24-26 under 35 USC 102(e) as anticipated by US Publication 2005/0154759 ("Hofmeister"). The Applicant traverses these rejections because each of the rejected claims recites at least two limitations that are not disclosed in Hofmeister, as alleged.

The first limitation that is not disclosed in the cited portions of Hofmeister is "in response to a new application being made available at a server, transmitting a message over a wireless connection to a set of wireless communication devices indicating that said new application is available" (emphasis added). At page 4 of the Office Action, the Examiner cites Hofmeister paragraphs 0053, 0072 and 0083 as disclosing this feature. However, close examination of these paragraphs reveals that the above-emphasized limitation is actually not disclosed.

The first cited paragraph (0053) describes operation at the mobile device upon receipt of a "push message" for notifying a user that, e.g., a new application is available. However, paragraph 0053 does not indicate that the push message was transmitted "in response to a new application being made available at a server." Indeed, it is silent as to what caused the push message to be transmitted.

The second cited paragraph (0072) also describes operation at the mobile device

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upon receipt of a push message and fails to indicate the trigger for transmitting the push message and, in particular, that the message was transmitted "in response to a new application being made available at a server."

The third cited paragraph of Hofmeister (0083) describes operation at the catalog server for sending a push message. Although it is stated that a push message may be sent "periodically" or "in response to some event," neither of those conditions definitively discloses the limitation emphasized above. MPEP 2131: For anticipation to be established, "the identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The second limitation that is not shown in Hofmeister as alleged is "wherein said set of wireless communications devices is a subset of an overall set of wireless communications devices in communication with said server." At page 4 of the Office Action, the Examiner cites Hofmeister paragraphs 0032 and 0050-0051 as disclosing this limitation ("Send message to devices that submitted request or indicated by "Send-to-a-Friend"). However, close examination of these features of Hofmeister reveal that the relevant limitation is not clearly shown in those paragraphs.

It is initially noted that the "set of wireless communications devices" from the claim limitation at issue does not refer to just any set of devices, but rather to the set of devices to which a message is transmitted in response to a new application being made available at a server. As claimed, this set of devices is a subset of an overall set of

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wireless communication devices in communication with the server.

Bearing that distinction in mind, it can be seen that the "send message to devices that submitted request" feature of Hofmeister paragraph 0032 does not show the limitation at issue. Although Hofmeister paragraph 0032 does disclose the sending of a message to some devices, the devices are merely devices that have requested the message. In other words, the messages sent to those devices are merely responsive to requests from those devices. The messages are not transmitted "in response to a new application being made available at a server," as required. Thus the devices cannot constitute the claimed set of devices.

Moreover, any messages that are sent to devices as a result of the "Send-to-a-Friend" feature referred to in Hofmeister paragraph 0050 are only sent in response to user selection of an application via a web page presented by a catalog server and user entry of identifying information regarding the destination mobile device (see Hofmeister 0073, last sentence through to paragraph 0075). The messages are not transmitted "in response to a new application being made available at a server." Accordingly, the above-noted limitation cannot be met, because the devices involved in the "Send-to-a-Friend" feature do not constitute a set of devices to which a message is transmitted in response to a new application being made available at a server.

Because the two above-noted limitations are not shown, no anticipation of claim 1 has been established. The same arguments are equally applicable to corresponding independent claims 9 and 17, and to all dependent claims, by logical implication.

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In view of the foregoing, favorable reconsideration and allowance of the application are earnestly solicited.

Respectfully submitted,


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